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Supreme Court U.S.

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**In The
Supreme Court of the United States
October Term, 1985**

BETHEL SCHOOL DISTRICT NO. 403; et al.,
Petitioners,
v.

MATTHEW N. FRASER, a Minor; et al.,
Respondent.

**On Writ of Certiorari to the United States
Court of Appeals for the Ninth Circuit**

**BRIEF AMICUS CURIAE OF PACIFIC LEGAL FOUNDATION;
NATIONAL SCHOOL SAFETY CENTER; AMERICAN
ASSOCIATION OF SCHOOL ADMINISTRATORS; NATIONAL
ASSOCIATION OF SECONDARY SCHOOL PRINCIPALS;
NATIONAL ALLIANCE FOR SAFE SCHOOLS; INTERNATIONAL
ASSOCIATION OF EDUCATIONAL PEACE OFFICERS;
NATIONAL ASSOCIATION OF SCHOOL SECURITY
DIRECTORS; CALIFORNIA SCHOOL PEACE OFFICERS
ASSOCIATION; CENTER FOR EDUCATIONAL LEADERSHIP;
DR. STUART GOTHOLD, SUPERINTENDENT OF
LOS ANGELES COUNTY SCHOOLS, CALIFORNIA;
HERBERT SANG, SUPERINTENDENT OF DUVAL COUNTY
SCHOOLS, FLORIDA; DR. FLORETTA MCKENZIE,
SUPERINTENDENT OF DISTRICT OF COLUMBIA SCHOOLS;
SAN DIEGO UNIFIED SCHOOL DISTRICT; AND VICTIMS
ASSISTANCE LEGAL ORGANIZATION IN SUPPORT OF
PETITIONER, BETHEL SCHOOL DISTRICT NO. 403, ET AL.**

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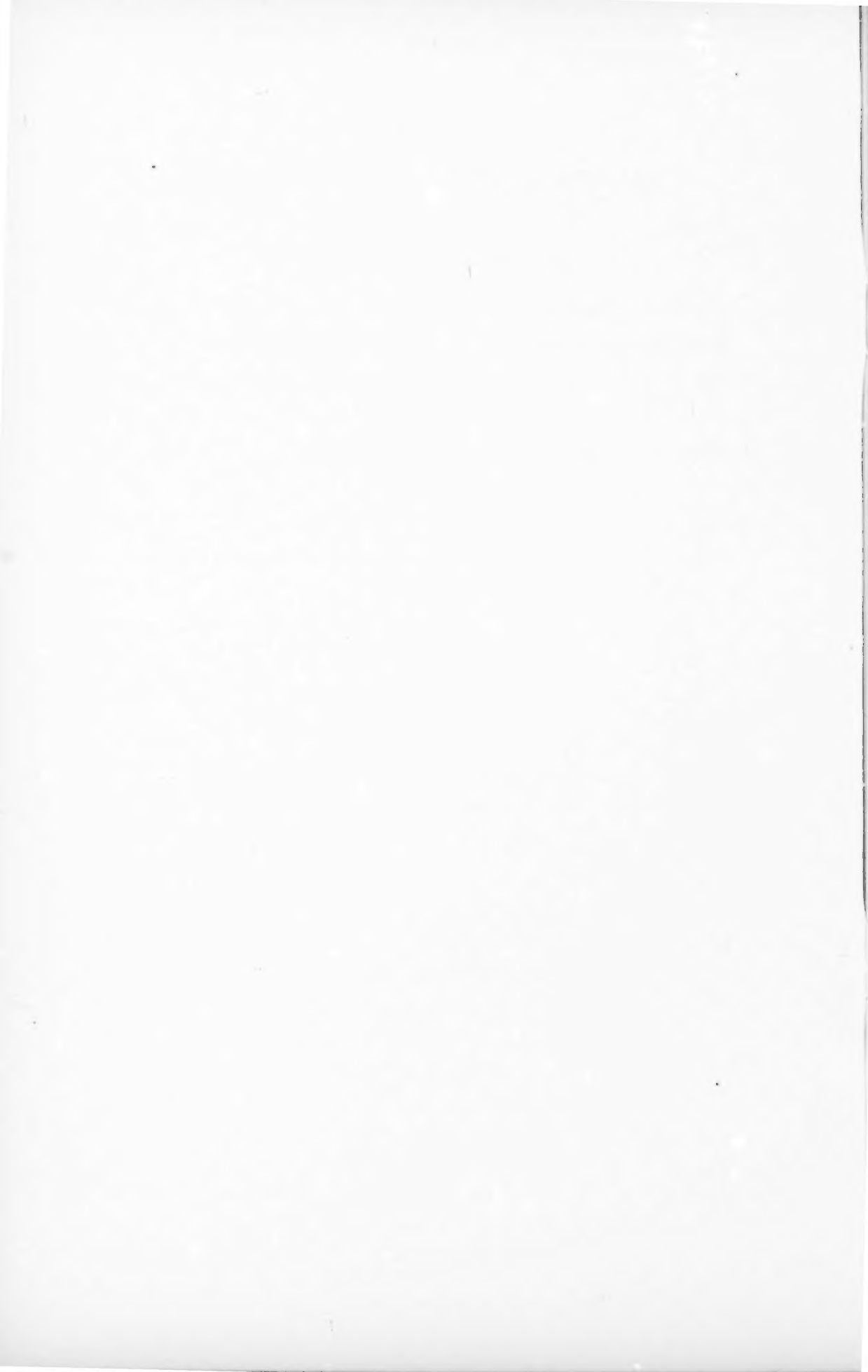
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INTERESTS OF AMICI

This brief amicus curiae is respectfully submitted pursuant to Supreme Court Rule No. 36. Consent to the filing of this brief has been granted by counsel for all parties; the letters of consent have been lodged with the Clerk of this Court.

The identities and interests of amici are as follows:

Pacific Legal Foundation is a nonprofit, tax-exempt corporation, incorporated under the laws of California for the purpose of participating in litigation affecting public policy. Policy of the Foundation is set by a Board of Trustees composed of concerned citizens, the majority of whom are attorneys.

Pacific Legal Foundation has participated in several cases which involved issues similar to that presented in this matter. The Foundation's public policy perspective and litigation experience in weighing the rights of individual students against those of other students and of school authorities will help provide this Court with additional argument to review the holding of the Ninth Circuit Court of Appeals in this matter.

The National School Safety Center, a nonprofit partnership between the United States Departments of Justice and Education and Pepperdine University, is formally funded by the federal Office of Juvenile Justice and Delinquency Prevention. This partnership, which the National School Safety Center represents nationwide, was established to promote proactive cooperation between the nation's legal, law enforcement, and education communities to positively and effectively address the problems of crime, violence, vandalism, discipline, and truancy disrupting our nation's schools.

Because this case, *Bethel School District No. 403 v. Fraser*, is expected to be a landmark decision, with a direct impact on the ways and means schools must structure and impose discipline, the center, with its national mandate, and its co-amici, with their manifest responsibilities, hope

to positively assist the Court to respond in the most reasonable and effective manner.

The American Association of School Administrators (AASA) is a professional association representing more than 17,000 educational leaders in North America and other parts of the world. AASA is dedicated to enhancing the professionalism of educational leaders who are the key to excellence in our schools and who generally have the ultimate administrative responsibility for supervision of disciplinary practices in schools. AASA members are responsible for a major proportion of the nation's 100,000 schools, 2.4 million teachers, and 44 million students. AASA members are directly influenced by court decisions which deal with relevant legal issues, discipline, suspension, and expulsion procedures.

The National Association of Secondary School Principals (NASSP) is a professional organization representing more than 35,000 site administrators who administer the nation's middle-level and senior high schools. NASSP's members are directly responsible for the safety and education of our nation's youth. NASSP members are responsible for a major proportion of the nation's 100,000 schools, 2.4 million teachers, and 44 million students. They are the line administrators most responsible for the day-to-day implementation of disciplinary practices in the schools. Every court decision regarding student discipline, suspension, and expulsion directly influences the membership of NASSP.

The National Alliance for Safe Schools (NASS) is a nonprofit corporation representing a coalition of educators, law enforcers, and others. NASS provides public information, training, technical assistance, research, and publications about school crime prevention. NASS represents

210 school security directors from all 50 states and the District of Columbia. NASS membership is responsible for the safety and well-being of millions of students, teachers, and staff on campuses throughout America. The work of NASS is directly influenced by court decisions regarding student discipline, suspension, and expulsion procedures.

The International Association of Educational Peace Officers (IAEPO) is a professional organization representing a membership of 75 leading professionals from 20 states and 2 foreign countries. IAEPO members are responsible for the safety and well-being of millions of students, teachers, and staff on campuses throughout America. IAEPO members are directly influenced by court decisions which deal with issues of student discipline, suspension, and expulsion procedures.

The National Association of School Security Directors (NASSD) is a professional organization representing a membership of 150 professionals from 30 states. NASSD membership is responsible for the safety and well-being of millions of students, teachers, and staff on campuses throughout America. NASSD members are directly influenced by court decisions regarding student discipline, suspension, and expulsion procedures.

The California School Peace Officers Association (CSPOA) has a membership of more than 300 school security personnel representing 88 school districts throughout California. The members of CSPOA are responsible for the safety of hundreds of thousands of students, teachers, and staff, for enforcement of the law and countless

school district policies and procedures. CSPOA's members are directly influenced by court decisions involving student discipline, suspension, and expulsion procedures.

The Center for Educational Leadership is a university-based consulting and research consortium which provides training to improve the education profession at all levels. This center helps school, community college, and university leaders more effectively function at their individual sites. This center's clients are directly influenced by court decisions which deal with student discipline, suspension, and expulsion procedures.

Dr. Stuart Gothold is the Superintendent of the Los Angeles County, California, Office of Education. This office comprises the second largest urban school district in the nation and includes 82 school districts, 1,820 schools, 48,899 teachers, and 1,275,041 students. This office is responsible for reviewing suspension, expulsion, and discipline policies to ensure statutory and constitutional compliance by the 82 districts. Therefore, court decisions, such as *Bethel*, directly impact this office.

Herbert Sang is the Superintendent of the Duval County, Florida, Public School District. The district includes 141 schools, approximately 5,000 teachers, and more than 100,000 students. Every school district in America must adhere to court decisions regarding discipline policies, and suspension or expulsion procedures. Therefore, court decisions, such as this one, directly influence the Duval County Public Schools.

Dr. Floretta McKenzie is the Superintendent of the Washington, D.C., public schools. This district includes 184 schools, 5,242 teachers, and 87,677 students. Since every school district in America must adhere to court

decisions regarding discipline, suspension, and expulsion procedures, all legal decisions, such as this one, directly influence the Washington, D.C., public schools.

The San Diego Unified School District is the eighth largest urban school district in the nation and includes 150 schools, 6,000 teachers, and 113,000 students. Its superintendent is Dr. Thomas Payzant. Since every school district in America must adhere to court decisions regarding discipline, suspension, and expulsion procedures, all relevant legal decisions, such as this one, directly influence the San Diego Unified School District.

The Victims Assistance Legal Organization (VALOR) is a national clearinghouse of information for attorneys who represent crime victims, including elementary, junior, and senior high school crime victims. VALOR helps promote safe, secure, and peaceful schools, and recognizes there can be no effective learning without positive campus climates. VALOR believes there will be increased numbers of elementary, junior, and senior high school campus crime victims if the lower appellate court decision in this case is not reversed. To improve campus climate and decrease campus crime victims, schools must have flexibility and control of their campuses, without the omnipresent specter of potential litigation.

OPINION BELOW

The opinion of the United States Court of Appeals for the Ninth Circuit is reported at 755 F.2d 1356 (9th Cir. 1985).

STATEMENT OF THE CASE

This case presents the issue of whether a student, because of his immaturity and the special purposes of public schools, may be subject to more stringent regulations than an adult outside the school environment. This case also raises the question of the role of school officials in maintaining an environment conducive to learning.

Matthew Fraser, a senior at Bethel High School in Washington state, spoke before 600 students at an all-school assembly. The students, between the ages of 14 and 18, were given a choice of attending either the assembly or a study hall. In his speech on behalf of a candidate for student body vice president, Fraser, as he later testified, deliberately used sexual innuendo in hopes that the students would perceive his sexual references. He succeeded, as students in the audience hooted and yelled and simulated masturbation and sexual intercourse. An independent educational expert testified at trial that Fraser's speech was sexually harassing to female students and disruptive to the learning process.

The following day Fraser was given oral and written notice that the school believed he had violated the school's disruptive conduct rule. After a hearing, Fraser was suspended for three days and informed that his name would be removed from consideration as a candidate for commencement speaker. When Fraser filed suit against the school district, the District Court found that the suspension violated Fraser's First Amendment rights of free expression, that the school's disruptive conduct rule was unconstitutionally vague and overbroad, and that the failure of the disciplinary rules to specify removal of names for

graduation speaker consideration violated due process. The decision was affirmed by a divided Ninth Circuit panel.

SUMMARY OF ARGUMENT

The Ninth Circuit's opinion in this case has raised substantial questions regarding the role of school officials in maintaining a school environment conducive to the preparation of individuals for participation in society and in inculcating fundamental community values. This case involves the issue of the extent to which the state's control over the conduct of children may reach beyond the scope of its authority over adults.

The legitimate and essential goals of public education are multiple. Public schools do not limit their function to "reading, writing, and arithmetic" but teach community values, including social and moral values. *Board of Education v. Pico*, 457 U.S. 853, 864 (1982). This unique demand placed on public schools requires an environment in which learning and social maturation can occur. To achieve this goal we must give "freedom to the teachers to teach and of students to learn," *Epperson v. Arkansas*, 393 U.S. 97, 104 (1968), in an environment free of disruption. This cannot be done if school authorities are prevented by the courts from maintaining a reasonable yet swift and informal discipline procedure.

Amici take the position that students do have rights which are protected by the Federal Constitution and they do not shed them at the schoolhouse gate, *Tinker v. Des Moines Independent Community School District*,

393 U.S. 503, 506 (1968), yet it is necessary to balance these students' rights against the special school environment where disciplinary, health, and safety considerations relating to minors take on special significance.

Amici stress that school administrators and personnel are professionally trained individuals who are competent and dedicated experts in the field of education. The courts lack this special knowledge and should let stand decisions by these experts as to what is and is not required in the day-to-day administration of the schools unless these decisions clearly abuse students' constitutional rights.

Further, amici take issue with the Ninth Circuit requirement that school disciplinary rules must meet the same due process standard as criminal statutes. If this were so, specific description of all prohibited language and conduct, as well as the resulting discipline, would have to be set forth in each student's rule book. This would take away the necessary flexibility school officials require for maintaining security and order in schools and to meet each situation on a case-by-case basis. Also, by placing the specific, prohibited language and conduct in the student's handbook, it may tempt the student to engage in this prohibited conduct and could shock both parents and students with its descriptions.

Amici urge this Court to reverse the Ninth Circuit's opinion which places a straightjacket on school officials and adopt instead a standard of reasonableness for the implementation and enforcement of school conduct rules.

ARGUMENT

I

THE NEEDS OF THE EDUCATION PROCESS LIMIT A STUDENTS' RIGHT OF FREE SPEECH

A. Students' Free Speech Rights May Be Reasonably Limited to Meet the Needs of the School Environment

This case examines the scope and extent of the right of public school students to speak freely in the school environment in relation to the authority of school officials to prevent disruption and maintain reasonable standards of student deportment. This Court in *Board of Education v. Pico*, 457 U.S. at 864, recognized that local school boards have broad discretion in the management of school affairs, but this discretion must be "exercised in a manner that comports with the transcendent imperatives of the First Amendment." While the role of the First Amendment is to foster individual self-expression, all First Amendment rights accorded to students must be construed "in light of the special characteristics of the school environment." *Tinker v. Des Moines Independent Community School District*, 393 U.S. at 506.

In *Tinker* this Court gave recognition to the exercise by students of the right of freedom of speech within a public school environment.

"First Amendment rights, applied in light of the special characteristics of the school environment, are available to teachers and students. It can hardly be argued that either students or teachers shed their constitutional rights to freedom of speech or expression at the schoolhouse gate." *Id.* at 506.

However, these rights of students must be balanced against the right—indeed the obligation—of school authorities to

administer the school and discipline the students. Thus this Court continued:

“On the other hand, the Court has repeatedly emphasized the need for affirming the comprehensive authority of the States and of school officials, consistent with fundamental constitutional safeguards, to prescribe and control conduct in the schools.” *Id.* at 507.

Tinker resolved the conflict between these competing rights by declaring that the student may exercise his right to freedom of expression unless the “conduct by the student, in class or out of it, which for any reason—whether it stems from time, place, or type of behavior—materially disrupts classwork or involves substantial disorder or invasion of the rights of others.” *Id.* at 513.

The Ninth Circuit in considering Fraser’s speech stated: “[W]e fail to see how we can distinguish this case from *Tinker* on the issue of disruption.” 755 F.2d at 1360. But in ignoring the hooting and yelling and sex act simulations engendered by Fraser’s speech, that court failed to heed this Court’s admonition:

“The problem posed by the present case does not relate to . . . deportment. It does not concern aggressive, disruptive action or even group demonstrations. Our problem involves direct, primary First Amendment rights akin to ‘pure speech.’ ” *Tinker*, 393 U.S. at 507-08.

It is therefore necessary to look beyond *Tinker* to determine the type of behavior not protected.

In *Board of Education v. Pico*, 457 U.S. 853, this Court was asked to decide what were the First Amendment restrictions on a decision of a local school board to remove from junior and senior high school libraries books

which were not obscene in a constitutional sense but were considered by some to be “ ‘anti-American, anti-Christian, anti-Sem[i]tic, and just plain filthy.’ ” *Id.* at 857. In remanding the case for trial, the plurality opinion by Justice Brennan stated:

“[L]ocal school boards may not remove books from school library shelves simply because they dislike the ideas contained in those books and seek by their removal to ‘prescribe what shall be orthodox in politics, nationalism, religion, or other matters of opinion.’ ” *Id.* at 872.

Nevertheless, the plurality noted that a decision to remove the books simply because they were pervasively vulgar or educationally unsuitable would be constitutionally permissible. *Id.* at 871. It follows that absent an impermissible motive to suppress ideas or impose political orthodoxy, school districts should be able to classify disruptive speech that is based on sexual innuendo as improper at a school assembly and take reasonable steps to restrict such activity.

B. School Authorities May Place Reasonable Time, Place, and Manner Restrictions on Speech to Protect the School Environment from Disruption

Generally, it has been recognized that the state may place reasonable time, place, and manner restrictions on speech that takes place in the public forum, so long as these regulations are without regard to content. *See Perry Education Association v. Perry Local Educators' Association*, 460 U.S. 37 (1983). There this Court noted:

“In addition to time, place, and manner regulations, the State may reserve the forum for its intended purposes, communicative or otherwise, as long as the

regulation on speech is reasonable and not an effort to suppress expression merely because public officials oppose the speaker's view. As we have stated on several occasions, “ “[t]he State, no less than a private owner of property, has power to preserve the property under its control for the use to which it is lawfully dedicated.” ” ” ” *Id.* at 46 (citations omitted).

Obviously, a public school is not a traditional public forum as is a street or park. The public school during schools hours does not make its facilities generally available. Rather, school authorities can reserve the facility for its intended purpose, that is education.

The all-school assembly in this case was part of the students' education to foster participation in self-government. The speeches were for the limited purpose of nominating candidates. It is critical to note that the school in deciding to discipline Fraser for his speech did not discriminate against the substantive content of the speech, which was the nomination of a candidate, but rather the manner in which it was given. Fraser's political views were not punished, merely the offensive manner in which he expressed himself at a time when students were gathered for a school assembly.

**C. Indecent Speech in the School Environment
Undermines School Officials' Efforts to
Maintain Minimum Standards of Behavior and to
Protect Unsuspecting and Unwilling Listeners**

Fraser's speech was replete with intentional sexual innuendo, inappropriate in the school assembly setting. In *Federal Communications Commission v. Pacifica Foundation*, 438 U.S. 726 (1978), this Court held that the Federal Communications Commission may regulate a radio

broadcast which is "indecent" but not "obscene." In that case, a radio station broadcast for nearly 12 minutes a record of a George Carlin monologue during the early afternoon when children were likely to be in the audience. During this monologue, Carlin repeated words containing sexual and excretory language. Five members of this Court agreed that broadcasting receives "the most limited" free speech protections of all forms of communication because it is "a uniquely pervasive presence in the lives of all Americans" and "is uniquely accessible to children, even those too young to read." *Id.* at 749. As Justice Powell wrote in a separate opinion, "the result turns . . . on the unique characteristics of the broadcast media, combined with society's right to protect its children from speech generally agreed to be inappropriate for their years" *Id.* at 762.

The school context is at least equally pervasive in the lives of children and must be subject to at least the same level of regulation as broadcasting. This Court in *Pacific* found that the individual's right to be left alone, free from patently offensive, indecent material plainly outweighs the First Amendment rights of an intruder. *Federal Communications Commission*, 438 U.S. at 748.

Here Fraser subjected the students to a speech containing sexually suggestive and sexist connotations. These students and their teachers had no choice but to sit and endure Fraser's conduct during the assembly. The school authorities had a legitimate concern in regulating "conduct by the student . . . which . . . whether it stems from time, place, or type of behavior . . . involves . . . invasion of the rights of others." *Tinker*, 393 U.S. at 741. The

administration further felt the necessity to dispel any inference of school approval.

Fraser's performance created a collision with the rights of other students, an undermining of authority, and a lack of order, discipline, and decorum. "The proper operation of public school systems is one of the highest and most fundamental responsibilities of the state." *Blackwell v. Issaquena County Board of Education*, 363 F.2d 749, 754 (5th Cir. 1966). The school authorities in this case had a legitimate and substantial interest in the orderly conduct of school activities and a duty to protect such substantial interest in the school's operation.

II

COURTS SHOULD NOT INTERFERE IN DAILY SCHOOL OPERATIONS ABSENT AN ABUSE OF BASIC CONSTITUTIONAL RIGHTS

It must be recognized that a student is subject to far more stringent regulations than an adult outside a school environment. This Court stated in *Ginsberg v. New York*, 390 U.S. 629, 638 (1968), "where there is an invasion of protected freedoms 'the power of the state to control the conduct of children reaches beyond the scope of its authority over adults'"

By and large, public education is committed to the control of state and local authorities. "Courts do not and cannot intervene in the resolution of conflicts which arise in the daily operation of school systems and *which do not directly and sharply* implicate basic constitutional values." *Epperson v. Arkansas*, 393 U.S. at 104 (emphasis added).

In approaching this subject it must be recognized that school administrators and personnel are professionally

trained individuals who are experts in the field of education. Because judges lack such expertise, in the absence of very clear abuse by school authorities, bordering on capriciousness, arbitrariness, or bad faith, the courts should let stand these administrative decisions as to what is required in the day-to-day operation of the school. "It is not the role of the federal courts to set aside decisions of school administrators which the court may view as lacking a basis in wisdom or compassion." *Wood v. Strickland*, 420 U.S. 308, 326 (1975). A court may disagree with the judgment of school officials, but such disapproval provides no license or authorization to usurp the school officials' authority by substituting the court's judgment for that of the school.

III

A REASONABLENESS STANDARD MUST APPLY TO SCHOOL CONDUCT RULES

A. School Disciplinary Rules Must Be Sufficiently Flexible to Maintain Orderly Conduct

While the students' right to express and communicate ideas is protected by the First Amendment, this right must be balanced against the need for reasonable regulations to maintain orderly conduct during the school session. *Tinker* holds at 393 U.S. at 513: "The Constitution says that Congress (and the States) may not abridge the right to free speech. We properly read it to permit reasonable regulation of speech-connected activities in carefully restricted circumstances."

Amici submit that a school regulation is reasonable if it is "essential in maintaining order" and discipline on

school property and "measurably contributes to the maintenance of order and decorum within the educational system." *Burnside v. Byars*, 363 F.2d 744, 748 (5th Cir. 1966).

The school's disruptive conduct rule provides:

"In addition to the criminal acts defined above, the commission of, or participation in certain noncriminal activities or acts may lead to disciplinary action. Generally, these are acts which disrupt and interfere with the educational process.

"*Disruptive Conduct.* Conduct which materially and substantially interferes with the educational process is prohibited, including the use of obscene, profane language or gestures." 755 F.2d at 1357 n.1 (emphasis in original).

The Ninth Circuit concluded that this rule was unconstitutional on its face. 755 F.2d at 1365 n.12. Yet it is plain that this disruptive conduct rule is neither unconstitutionally vague nor overbroad.

A statute will be void from vagueness if the conduct forbidden by it leaves one without clear guidance so that a person "of common intelligence must necessarily guess at its meaning and differ as to its application." *Connally v. General Construction Co.*, 269 U.S. 385, 391 (1926). This doctrine is appropriate when considering the due process standards for criminal statutes; however, school district rules cannot be drafted with the same specificity. Articulation and enforcement of school disciplinary codes require a substantial degree of discretion to be left in the hands of school officials. The Fifth Circuit held in *Murray v. West Baton Rouge Parish School Board*, 472 F.2d 438, 442 (5th Cir. 1973), that "[a]bsent evidence that the broad wording in the statute is, in fact, being used to infringe on

First Amendment rights . . . we must assume that school officials are acting responsibly in applying the broad statutory command."

The school conduct rules must be flexible in light of the unique demands placed upon the state in its role as educator, including the need to maintain an environment in which learning and social maturation can occur. In this case, the rules prohibit conduct that materially and substantially disrupts the educational process. The language of the rule is sufficient to put a student on notice that lewd language offensive to modesty or decency is prohibited. Fraser's deliberate use of sexual innuendo is precisely the type of conduct the rule prohibits. The rule, therefore, is not unconstitutionally vague.

Nor is the rule subject to challenge under the overbreadth doctrine. An overbroad rule is one that is designed to burden or punish activities that are constitutionally protected, including within its scope activities protected by the First Amendment. *Thornhill v. Alabama*, 310 U.S. 88, 96 (1940). As stated earlier, this Court has recognized that school districts may constitutionally prohibit certain conduct that would otherwise be protected by the First Amendment. See, e.g., *Tinker*, 393 U.S. at 513. Further, the rule on its face is content neutral and seeks only to further the legitimate end of preventing disruption. *Grayned v. City of Rockford*, 408 U.S. 104, 110 (1972), declares: "Condemned to the use of words, we can never expect mathematical certainty from our language. The words of the . . . ordinance are marked by 'flexibility and reasonable breadth, rather than meticulous specificity. . . .'" Citing *Esteban v. Central Missouri State College*, 415 F.2d 1077, 1088 (8th Cir. 1969).

Amici stress that even though the rule does not state what conduct is prohibited with the degree of specificity that the Ninth Circuit would require, it is clearly apparent from the rule's announced purpose that preventing disruption of the school environment is paramount. The nature of the school environment makes this type of rule reasonable. Fraser's speech might be appropriate in a park but was clearly disruptive in the school environment. Therefore, in restricting such misbehavior it is clear that this rule is not substantially overbroad.

B. A Standard of Reasonableness Is Required to Give School Officials the Necessary Flexibility to Maintain Order in the School Environment

In *New Jersey v. T.L.O.*, — U.S. —, 105 S. Ct. 733 (1985), this Court stated: "Today's public school officials do not merely exercise authority voluntarily conferred on them by individual parents; rather, they act in furtherance of publicly mandated educational and disciplinary policies." This Court stressed the need to balance the students' legitimate expectation of privacy guaranteed by the Fourth Amendment on one side against the "need for effective methods to deal with breaches of public order" on the other side. Amici take the position that the same standards of reasonableness should apply to school conduct rules. It is necessary to balance the substantial public interest reposed in teachers and administrators in maintaining an atmosphere free of disruption against the students' guarantee of free speech. As this Court stated in *T.L.O.*:

"[T]he preservation of order and a proper educational environment requires close supervision of school children, as well as the enforcement of rules against conduct that would be perfectly permissible if undertaken by an adult. . . . Accordingly, we have recognized that maintaining security and order in the schools requires a certain degree of flexibility in school disciplinary procedures, and we have respected the value of preserving the informality of the student-teacher relationship." *Id.* at 742-43.

The standard required by the Ninth Circuit is unworkable. It would require each student's handbook to define specifically the types of language and conduct prohibited. This would create an inflexible standard for school officials to follow, possibly tempt students to engage in the prohibited conduct, and offend by the nature of such language many of the students and parents. It is urged by amici that the rigid specificity requirement in rules of school conduct demanded by the Ninth Circuit be replaced by a standard of reasonableness in determining whether the stated purpose of the rules provides sufficient notice to students of conduct not tolerated in public schools. The school officials must rely on the circumstances of each incident in determining the appropriate action to be taken. Without this flexibility the ability of the school officials to maintain order is unduly burdened. As this Court held in *T.L.O.*:

"By focusing attention on the question of reasonableness, th[is] standard . . . [will] permit them [school officials] to regulate their conduct according to the dictates of *reason and common sense*. At the same time, the reasonableness standard should ensure that the interests of students will be invaded no more than is necessary to achieve the legitimate end of preserving order in the schools." *Id.* at 744 (emphasis added).

In this case, the rules prohibit conduct which would materially and substantially interfere with the educational process. The rule goes on to give an example of prohibited conduct—use of obscene, profane language or gestures. Had Fraser been uncertain of what was deemed obscene he could have looked it up in a dictionary. The everyday common meaning of obscene is “grossly repugnant to the generally accepted notion of what is appropriate.” *Webster’s Third New International Dictionary* 1557 (1971). This would have put Fraser on notice that his intentional use of sexual innuendo before an all-school assembly would fall within the conduct prohibited by the disruptive conduct rule.

Amici therefore urge this Court to find the Bethel High School disruptive conduct rule constitutional and the standard for applying similar rules be one of reasonableness.

CONCLUSION

Students have rights which are protected by the Federal Constitution and they do not shed them at the school-house gate. Yet it is the responsibility of school authorities to promulgate rules and regulations governing the conduct and operations of schools, including those relating to disruptive behavior in order to ensure an atmosphere conducive to the learning process. These conflicting needs have to be balanced and a standard of reasonableness established lest the specter of chaos raised by Justice Black’s dissent in *Tinker* be realized. 393 U.S. at 524-25.

When school administrators and teaching experts are confronted with conduct, whether oral or physical, which is disruptive of the educational process, and such disturbance has a prejudicial effect on the educational environment, and an adverse effect on other students, the academic system will best be served if our school officials are allowed to discharge their "important, delicate, and highly discretionary functions," *id.* at 507, within the limits and constraints of the Federal Constitution.

This is of critical import because the nation's school authorities must administer more than 100,000 schools, 2.4 million teachers, and 44 million students on a daily basis while supervising an annual budget of \$200 billion. To substitute a wooden rigidity for reasonableness in disciplinary processes, as would the Ninth Circuit, in the face of such huge numbers and attendant responsibilities, is unworkable, even absurd. Amici therefore urge that the decision of the Ninth Circuit be reversed.

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Respectfully submitted,

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